

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

In the Matter of the Search of
the patient records located,
on March 2, 2010, in a safe at
35 West Third Avenue
Williamson, West Virginia

Case No. 2:10-mj-00037

**RESPONSE OF THE UNITED STATES TO
MOTION TO VACATE SEARCH AND SEIZURE WARRANT
OF MARCH 1, 2010 AND FOR REMEDIAL ACTION**

Comes now the United States of America, by Monica K. Schwartz, Assistant United States Attorney for the Southern District of West Virginia, with its response to Katherine A. Hoover's ("Movant") "Motion to Vacate Search and Seizure Warrant of March 1, 2010 and for Remedial Action." Movant's motion is properly considered as a motion to return property pursuant to Federal Rule of Criminal Procedure 41(g), which provides as follows:

(g) Motion to Return Property. A person aggrieved by an unlawful search and seizure of property or by the deprivations of property may move for the property's return. The motion must be filed in the district court where the property was seized. The Court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

Movant requests "that this Court vacate the search warrant signed on March 1, 2010" and "return everything that was taken." Pursuant to this Court's order, and the very style of the pending motion, the relevant warrant was issued on March 2, 2010, in this

case, Case No. 2:10-mj-00037, and authorized only the search and seizure of eight patient records.

It is not clear how the movant was "aggrieved" by the seizure of the patient records. Movant alleges generally that the search and seizure warrant was fraudulent and/or otherwise improper but offers no specific factual arguments relating to these files. Further, movant has offered no relevant legal authority to support these contentions.

The patient records at issue were located, on March 2, 2010, in a safe, at 35 West Third Avenue, Williamson, West Virginia, during the execution of a search warrant which had been issued on February 26, 2010, in Case No. 2:10-mj-00032.

The specific patient records seized were listed in the affidavit supporting the search warrant, in Case No. 2:10-mj-00037.

Pursuant to Rule 41(g) of the Federal Rules of Criminal Procedure, a motion for return of property "may be denied if the [movant] is not entitled to the lawful possession of the seized property, the property is contraband or subject to forfeiture or the government's need for the property as evidence continues." United States v. Rudisill, 358 F. Appx 421 (4th Cir. 2009)(citing United States v. Van Cauwenberghe, 934 F.2d 1048, 1060-61 (9th Cir. 1991)). Movant has not asserted or demonstrated that she is entitled to possession of the seized patient records. Furthermore, the United States has an ongoing investigation related to the

medical practice from which the patient records were seized. The seized patient files are relevant thereto and are, therefore, needed by the United States.

Movant's motion fails to specify how movant is "aggrevied" by the seizure of the patient records and further, it cites no relevant factual argument or legal authority. The seizure of the patient records was, in fact, proper as they were within the scope of a duly issued search warrant. Further, the United States has a continuing need for the files.

Wherefore, Movant's motion should be denied.

To the extent that there is any factual determination necessary for the court to rule on movant's request to "return" the seized patient records, the United States requests that this Court schedule an evidentiary hearing and require defendant to appear in person.

Respectfully submitted,

R. BOOTH GOODWIN II
United States Attorney

By:

s/Monica K. Schwartz
MONICA K. SCHWARTZ Bar Number: 4938
Assistant U.S. Attorney
P.O. Box 1713
Charleston, WV 25326
Telephone: (304) 345-2200
Fax: (304) 347-5104
E-mail: monica.schwartz@usdoj.gov

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing "Response of the United States to Motion to Vacate Search and Seizure Warrant of March 1, 2010 and for Remedial Action" has been electronically filed and service has been made on Movant by federal expressing the same this the 28th day of June, 2010, to:

Katherine A. Hoover, M.D.
C/O Dr. Norman Gay
247 West Bay Street
Nassau, Bahamas

s/Monica K. Schwartz

MONICA K. SCHWARTZ Bar Number: 4938
Assistant U.S. Attorney
P.O. Box 1713
Charleston, WV 25326
Telephone: (304) 345-2200
Fax: (304) 347-5104
E-mail: monica.schwartz@usdoj.gov